BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-263-E

Cherokee County Cogeneration Partners, LLC	)
	)
Complainant,	)
	)
v.	)
	)
Duke Energy Progress, LLC and Duke Energy Carolinas, LLC,	)
	)
Respondents.	)

PRE-FILED REBUTTAL TESTIMONY OF

KURT G. STRUNK

ON BEHALF OF

CHEROKEE COUNTY COGENERATION PARTNERS, LLC

JUNE 14, 2021

TABLE OF CONTENTS

I. INTRODUCTION

1. Q. Please state your name, title, and business address.

A. My name is Kurt G. Strunk. My business address is 1166 Avenue of the Americas, New York, New York, 10036.

2. Q. Are you the same Kurt G. Strunk who prepared Direct Testimony on behalf of Cherokee County Cogeneration Partners, LLC in this matter?

A. Yes. I prepared Direct Testimony on behalf of Cherokee County Cogeneration Partners, LLC ("Cherokee") filed with this Commission on May 3, 2021.

3. Q. What is the purpose of your rebuttal testimony?

A. My testimony responds to the statements of various employees of Duke Energy Carolinas ("DEC"), who present opinions and factual evidence in their pre-filed testimony dated May 24, 2021. Specifically, my testimony responds to:

- The general characterizations made by the DEC witnesses of DEC's October 2018 offer to Cherokee, particularly their contention that the rate offered to Cherokee "was based on then-current inputs in a manner that was fundamentally consistent with the Commission's directives to the Companies in its recent avoided cost proceeding," was "not discriminatory to QFs," and was consistent with FERC's "implementing regulations." (Freund, p. 6, 7, 10)
- The statements of DEC witness Mr. Freund that my estimated PPA rate is grossly over-simplified, inappropriate, and stale relative to DEC's avoided costs in October 2018. (Freund, p. 3, 12, 13)
- The claim of DEC witness Mr. Snider that the date of a QF's Legally Enforceable Obligation ("LEO") should align with the initial date of delivery of capacity and/or energy by the QF to the offtaking utility under that LEO. (Snider, p.13)

- The misstatement of my testimony by DEC witness Mr. Keen regarding the purported need of Cherokee for "higher rates." (Keen, p. 9)
- The misinterpretation of my testimony by DEC witness Ms. Bowman as it concerns the financing of Qualified Facilities ("QFs") under the Public Utility Regulatory Policies Act ("PURPA"). (Bowman, p. 25)

4. Q. What are your primary conclusions?

A. My analysis of the evidence advanced by DEC leads me to the following conclusions on each of the DEC claims listed above:

- The factual circumstances do not support DEC's claim that the utility acted in good faith to strike a deal with Cherokee and applied the guidance from this Commission and the FERC in its dealings with Cherokee. My rebuttal testimony establishes that the DEC rate offered to Cherokee in October 2018 was not reflective of the most recent Commission Order on avoided costs and did not reasonably follow FERC's implementing regulations.
- Mr. Freund's estimate of an appropriate avoided-cost PPA rate as of October 2018 is based on assumptions that were not approved by the Commission for use in QF pricing at the time Cherokee communicated its commitment to sell Cherokee's capacity and energy to DEC in September 2018.[1] Mr. Freund's criticism that the PPA rate I calculate is inappropriate is without merit. My calculations rely on DEC's *own* avoided cost estimates and Commission-approved avoided cost rates.[2]

[1] See Mr. Freund's Testimony, p. 14.

[2] *Ibid*, p. 3.

- Mr. Snider's novel interpretation that seeks to align the date of a LEO with the first date of delivery to the offtaking utility runs counter to the intent and plain language of PURPA and the implementing regulations.[3] Under Mr. Snider's view, QFs would only establish LEOs once they have begun commercial operation and deliver energy and/or capacity. Under this model, they would not be granted reasonable opportunities to displace utility investment in new capacity.
- Mr. Keen's contention that I testified that Cherokee needed rates that were higher than DEC's avoided cost is false.[4] My testimony includes no such statement. My testimony is that Cherokee was entitled to avoided-cost rates, consistent with FERC's implementing regulations and the guidance of this Commission. My understanding is that Cherokee never sought a rate that was above reasonably forecasted avoided costs for DEC as of September 2018 when Cherokee expressed its commitment of capacity to DEC.
- Ms. Bowman errs in interpreting my testimony to mean that *any* potential QF should be financeable.[5] It is a truism that a QF that is uneconomic relative to the offtaking utility's avoided costs will not be financeable. My testimony simply recognizes that the legal and regulatory framework for QFs under PURPA assures financeability for QFs that are economically viable at avoided-cost rates. PURPA sets the rate payable to QFs at the offtaking utility's avoided cost. It would be unreasonable to expect QFs that are not viable at avoided cost rates to obtain financing.

---

[3] See Mr. Snider's Testimony, p. 13.

[4] See Mr. Keen's Testimony, p. 9, 22.

[5] See Ms. Bowman's Testimony, p. 25.

Having reviewed DEC's reply evidence, I continue to support the reasonableness of the conclusions presented in my Direct Testimony. Contrary to the contentions of DEC's witnesses,[6] Duke's October 2018 offer was unreasonable as it did not include compensation for avoided capacity, while DEC was offering avoided capacity cost compensation to other QFs and was itself anticipating adding over 800 megawatts of new capacity during the 2020 to 2026 time frame.[7] Duke's October 2018 offer was also unreasonable because it was not structured to confer the benefits of Cherokee's dispatchability to DEC's customers.

My Direct Testimony established that, given Cherokee's September 2018 commitment to put the Cherokee capacity and energy to DEC, a reasonable avoided-cost PPA rate for Cherokee for a delivery start date of January 1, 2021 is $110 per kW-year, inclusive of compensation for Cherokee's start costs. This rate incorporates the then most recent Commission-approved avoided capacity cost rates and DEC's own avoided energy cost forecast, as conveyed to Cherokee in DEC's October 2018 offer.

As noted, in response to Mr. Snider, I continue to support the economic need for the establishment of a LEO well in advance of the contract delivery date. Building lead time into the process is necessary and appropriate for a Cherokee PPA renewal, just as it is for a yet-to-be-developed QFs. If the Commission were to accept Mr. Snider's recommendation to align LEOs and deliveries, doing so would disadvantage QFs and hinder their ability to displace utility investment. Under Mr. Snider's approach, DEC would rarely if ever find itself

[6] See, for example, Mr. Freund's Testimony, p. 6.

[7] See Duke Energy Carolinas 2018 Integrated Resource Plan, Docket No. 2018-10-E, p. 67, 87.

with insufficient capacity at the time of delivery and thus would not be able to defer any utility investment because the QF contracting process would not incorporate any lead time. Mr. Snider's approach undermines the intent of PURPA and the plain language of the statute and implementing regulations.

II. RESPONSE TO CLAIM THAT DEC'S OCTOBER 2018 OFFER FOLLOWED GUIDANCE FROM FERC AND THIS COMMISSION

5. Q. Please identify those elements of DEC's testimony that you address in this section of your rebuttal.

A. In this section, I respond to DEC's claim that the utility acted in good faith to strike a deal with Cherokee and applied the guidance from this Commission and the FERC in its dealings with Cherokee. Specifically, Mr. Freund contends that the rate offered to Cherokee "was based on then-current inputs in a manner that was fundamentally consistent with the Commission's directives to the Companies in its recent avoided cost proceeding," was "not discriminatory to QFs," and was consistent with FERC's "implementing regulations." (Freund, p. 6, 7, 10) The fact pattern surrounding DEC's October 2018 offer does not support Mr. Freund's position.

6. Q. Why is Mr. Freund's claim not supported by the facts?

A. The facts show that DEC's October 2018 offer: (i) deviated from the guidance in "the Commission's directives to the Companies in its recent avoided cost proceeding," (ii) was discriminatory, and (iii) was not consistent with FERC's implementing regulations.

Before addressing how DEC deviated from the directives in Order 2016-349 and how the offer was discriminatory, I explain how DEC's October 2018 offer did not follow FERC's implementing regulations offered to guide negotiations between offtaking utilities and large QFs. DEC's October 2018 offer deviated from FERC's implementing regulations in several material respects.

- DEC's October 2018 offer ignored the requirement under FERC's implementing regulations that negotiations with large QFs take into account "the ability of the electric utility to dispatch the qualifying facility."[8]
- DEC's October 2018 offer did not reasonably address "the deferral of capacity additions," as required by FERC's implementing regulations.[9]
- DEC's October 2018 did not reasonably address "the reduction of fossil fuel use," as required by FERC's implementing regulations.[10]
- Because DEC's October 2018 offer failed to meet the requirements outlined above, and because it was discriminatory, it resulted in a rate that was not "just and reasonable to the electric consumer of the electric utility and in the public interest," also a requirement of FERC's implementing regulations.[11]

I address each deficiency in turn.

7. Q. Please rebut Mr. Freund's claim that the DEC's October 2018 offer followed the requirement under FERC's implementing regulations that negotiations with large QFs take into account "the ability of the electric utility to dispatch the qualifying facility."[12, 13]

A. DEC's October 2018 offer made no mention of Cherokee's dispatchability and was structured in such a way as to mirror the rates offered to non-dispatchable

---

[8] See 18 CFR § 292.304(e)(2)(ii)(A).

[9] *Ibid*, (e)(2)(iii).

[10] *Ibid*, (e)(2)(iii).

[11] *Ibid*, (a)(1)(i).

[12] See Mr. Freund's Testimony, p. 6.

[13] See 18 CFR § 292.304(e)(2)(ii)(A).

solar QFs that have essentially zero dispatch cost, deliver energy intermittently, and cannot be ramped up by DEC in response to load fluctuations. DEC states that its offer was "intended to provide price signals to which Cherokee could respond in accordance with their own economics."[14] Yet these price signals would not allow Cherokee to operate efficiently because they would not allow the dispatch of Cherokee in all appropriate circumstances. Under the October 2018 offer, in the event that Cherokee's dispatch cost exceeded the "price signal" but fell below Duke's avoided costs at the time of delivery, Cherokee would elect not to be dispatched, thereby foreclosing opportunities for DEC to achieve fuel savings. Contrary to Mr. Freund's testimony, DEC's offer did not reasonably address the dispatchability of Cherokee.

DEC's October 2018 offer did not manage gas price risk for the consuming public and would have obligated customers to pay a fixed rate for power from Cherokee irrespective of the level of gas prices. In contrast, under a dispatchable PPA structure, the consuming public pays less when gas prices decline, and if gas prices increase, the output is not must take but can be called upon only when economic. The existing PPA is a dispatchable PPA with dispatch costs implicitly a function of gas prices. Such a structure protects customers from the risks that a fixed-price, must-take QF contract will be out of market. To be most consistent with the implementing regulations, and with the parties' existing contract structure, the October 2018 offer from DEC should have placed dispatch decisions with DEC and left Cherokee indifferent as to dispatch. DEC's October 2018 offer did not do so.

[14] See DEC response to Cherokee Interrogatory 3.

The Cherokee facility is not a recent addition to the DEC portfolio of resources. DEC has a history of dispatching it accounting for gas price levels and power system conditions. Not accounting for its dispatchability, and not addressing gas price risk in a reasonable manner, meant that DEC's October 2018 did not follow the FERC's implementing regulations.

8. Q. Do DEC's responses to interrogatories further disprove Mr. Freund's claim that the DEC's October 2018 offer followed the requirement under FERC's implementing regulations that negotiations with large QFs take into account "the ability of the electric utility to dispatch the qualifying facility."

A. Yes, in response to Cherokee's Interrogatory 1, DEC provided a MS Excel spreadsheet entitled "Rate calc_Cherokee_Oct 2018 quote_v0.xlsx." That spreadsheet shows how DEC valued the energy from Cherokee during peak and off-peak periods. Nowhere in that valuation did DEC account for Cherokee's dispatchability. Instead, DEC treated the energy from Cherokee as having a fixed profile in peak and off-peak hours. Electric utilities in planning exercises typically apply such profiles to non-dispatchable resources but not to dispatchable ones. DEC's use of a fixed profile to evaluate Cherokee indicates that it was not accounting for Cherokee's dispatchability and instead treating it like a solar QF.

9. Q. Do DEC's responses to interrogatories further reveal how DEC could have taken into account dispatchability in the October 2018 offer and therefore corroborate your rebuttal of Mr. Freund above?

A. Yes, in response to Cherokee's Interrogatory 15, DEC provided a narrative description of how it had developed its February 2021 offer to Cherokee. That narrative description explains the process by which DEC, nearly 18 months after Cherokee put the capacity to DEC, considered the facility's dispatchability.

Specifically, DEC states in its attachment interrogatory response entitled "Cherokee contract capacity price calc (methodology)_02.16.21 v0" :

> The energy value for Cherokee was estimated using the methodology from the standard and large QF tariff pricing development, as established by the SC commission in DEC's last avoided cost proceeding. This involved the simulation of DEC's portfolio of generation resources in a "base case" scenario, and a "change-case" that reflects the addition of an increment of QF capacity to the simulation. **The change-case used for the Cherokee analysis added a QF with the characteristics of the Cherokee resource. Cherokee's VOM and start costs were assumed to equal the current/extended contract pricing. The difference in system production costs between the change-case and base-case represents the energy value of Cherokee.**

10. Q. Why is it important that DEC explicitly simulated the Cherokee resource characteristics in 2021?

A. It is important because it demonstrates that by 2021, at least, DEC was considering Cherokee as a dispatchable resource. It was pursuing a specific analytical technique that allowed DEC to evaluate the value of Cherokee as a dispatchable resource, an analytic technique that DEC had not applied in earlier stages of the negotiation process.

11. Q. Does the contrast between how DEC approached the February 2021 offer and how it approached the October 2018 offer shed light on the deficiencies of the October 2018 offer and undermine Mr. Freund's claim that DEC accounted for dispatchability as required by FERC's implementing regulations?

A. Yes, it does. The evidence advanced by DEC demonstrates that, in February 2021, DEC simulated its generation fleet with and without a resource with Cherokee's characteristics, reflecting Cherokee's dispatchability and the cost to start up the facility.[15] This difference between the with Cherokee case and without Cherokee case established the 2021 forecast of avoided energy costs.

[15] See DEC Responses to Cherokee Interrogatory 15.

In contrast, DEC's evidence confirms that DEC's February 2018 offer to Cherokee contained no such accounting for Cherokee's dispatchability. Rather, DEC confirms in its response to Cherokee Interrogatory 3 that it did not simulate its generation fleet with a resource with Cherokee's operating characteristics, further confirming that it did not properly take into account Cherokee's dispatchability, as required by FERC's implementing regulations.

12. Q. Turning now to Mr. Freund's claim that DEC accounted for the requirement in FERC's implementing regulations that the offtaking utility examine "the deferral of capacity additions," how do you respond?[16, 17]

A. In contrast to Mr. Freund's claim of compliance with these regulations, DEC's October 2018 offer was based on DEC's conclusion that it could not defer any capacity investment during the proposed PPA term. Yet its investment plan included over 800 megawatts of new capacity major investments before 2026. The investment plan included a 402 megawatt open-cycle combustion turbine at Lincoln scheduled to enter into commercial operation in 2024, over 5 years out at the time of DEC's October 2018 offer to Cherokee. (I note that CTs can have a lead time of as little as 2 years before commercial operation.)[18] In this regard, DEC's October 2018 offer is seemingly lacking in its compliance with the PURPA implementing regulations, namely the objective of putting QFs on equal footing with utility capacity investments and allowing reasonable opportunities to displace utility investments in new generation capacity. In addition, as I explain below, DEC's position on capacity compensation in its October 2018

[16] See Mr. Freund's Testimony, p. 6.

[17] See 18 CFR § 292.304(e)(2)(iii).

[18] See Energy Information Administration, "Assumptions to the Annual Energy Outlook 2021: Electricity Market Module," p. 6.

offer is not consistent with the directive given to DEC in Commission Order 2016-349, an Order DEC repeatedly claims it complied with.[19]

13. Q. Please respond to Mr. Freund's claim that DEC accounted for the requirement in FERC's implementing regulations that the offtaking utility account for the "reduction in fossil fuel use" in negotiating rates with large QFs.[20, 21]

A. DEC's October 2018 offer was not structured in a way that would incentivize Cherokee to operate in a way that maximizes opportunities to reduce fossil fuel use. Under the October 2018 offer, in the event that Cherokee's dispatch cost exceeded the fixed contract rate but fell below Duke's avoidable energy costs at the time of delivery, Cherokee would be incentivized not to be dispatched. However, in most such instances, Duke would be able to reduce fossil fuel use by substituting production from Cherokee for production from a higher heat rate resource. In those instances, Cherokee's production could displace energy from resources that are less efficient in converting fossil fuels to electricity and thereby reduce fossil fuel use. The DEC October 2018 offer obstructed the achievement of that objective and did not reasonably follow the FERC's implementing regulations as Mr. Freund contends.

14. Q. Please respond to Mr. Freund's claim that DEC accounted for the requirement in FERC's implementing regulations that rate offered by the offtaking utility be "just and reasonable." [22, 23]

A. DEC's October 2018 offer to Cherokee was not just and reasonable because it did not meet key provisions in the implementing regulations as described above.

---

[19] See DEC Responses to Cherokee Interrogatories 3, 6, 8, 12, and 14.

[20] See Mr. Freund's Testimony, p. 6.

[21] See 18 CFR § 292.304(e)(2)(iii).

[22] See Mr. Freund's Testimony, p. 6.

[23] 18 CFR § 292.304(a)(1)(i).

It was also not just and reasonable because it was discriminatory. As I explained in my Direct Testimony, the October 2018 offer to Cherokee DEC was discriminatory because DEC was offering other QFs rates that provided compensation for avoided capacity costs but was not offering that compensation to Cherokee.

15. Q. Please respond to Mr. Freund's claim that DEC's October 2018 offer followed the Commission's guidance in Order 2016-349.

A. Order 2016-349 dated May 12, 2016 in Docket 1995-1192-E established rates for small QFs under the standard offer and provided that rates for large QFs would be negotiated pursuant to FERC's implementing regulations. Although Mr. Freund claims (Freund, p. 6) that DEC's October 2018 offer was "fundamentally consistent" with that Order, it was not.

In Order 2016-349, the Commission approved a settlement whereby the adjudicated outcome from the most recent North Carolina avoided cost proceeding was deemed to be just and reasonable for application in South Carolina. Yet, in adjudicating the outcome in North Carolina, the NCUC had flatly rejected the approach that Mr. Snider presents as DEC's avoided capacity cost methodology. (Snider, p. 22-24) The NCUC held: "It is inappropriate in this docket, when employing the peaker method, to require the inclusion of zeroes for the early years when calculating avoided capacity rates."[24] DEC's October 2018 offer to Cherokee was based upon the assumption – the "inclusion of zeroes for the early years"— that had been rejected by the NCUC and implicitly accepted by this Commission when it deemed the settlement rates just

[24] Order Setting Avoided Cost Input Parameters, North Carolina Utilities Commission Docket No. E-100, Sub 140, December 31, 2014, p. 8.

and reasonable.[25] As such, I find DEC's claim that its methodology followed recent directives from the Commission in Order 2016-349 to be rather stretched.

III. RESPONSE TO MR. FREUND'S ESTIMATED PPA RATE

16. Q. Please identify those elements of DEC's testimony that you address in this section of your rebuttal.

A. In this section, I respond to the statements of DEC witness Mr. Freund that my estimated PPA rate is grossly over-simplified, inappropriate, and stale relative to DEC's avoided costs in October 2018. (Freund, p. 3, 12, 13).

17. Q. How do you respond to Mr. Freund's claim that your analysis is too simple?

A. Mr. Freund's criticism of my analysis is based on the fact that I did not use a production cost model. Yet in order to establish an approximation of the reasonable rate for Cherokee, I did not need to run a production cost model. I relied on the output of DEC's own production cost modeling, reflecting a constrained optimization of its complex electric power grid. Because I use DEC's own numbers for its avoided energy cost as of October 2018, Mr. Freund's criticism is without merit.

18. Q. If you had run a production cost model, do you expect that you would have calculated a higher PPA rate for Cherokee?

A. Yes. As noted, my analysis was based on the DEC September 2018 production cost model results, which DEC used as the basis for its October 2018 offer to Cherokee. As disclosed by DEC in response to interrogatories,[26] its 2018 production cost modeling used to price a PPA for Cherokee did not assess the value of Cherokee's dispatchability. Had I run my own dispatch modeling, that

---

[25] See Order No. 2016-349, Public Service Commission of South Carolina, Docket No. 1995-1192-E, May 12, 2016. See also *supra*, footnote 24.

[26] See DEC Responses to Cherokee Interrogatories 1 and 3.

modeling would have permitted Cherokee to ramp up and down in response to projected conditions on the power grid. The absence of explicit modeling of Cherokee's actual dispatch flexibility makes my analysis conservative. Incorporating flexibility could only increase the calculated value of Cherokee to the DEC system, all else equal.

19 Q. Mr. Freund says that your estimate of an appropriate avoided cost payment for Cherokee "failed to recognize start cost payments" that DEC makes under the current PPA. How do you respond?

A. Mr. Freund mischaracterizes my analysis. I did not ignore start cost payments. As I stated in my Direct Testimony, the avoided cost PPA rate I calculated of $110 per kW-year was "inclusive of compensation for start costs and Cherokee's fixed operations and maintenance costs."[27] I clarified further in Footnote 8, "[i]f the new PURPA contract were to provide for explicit payment of start costs or fixed operations and maintenance costs, the baseline capacity charge would be reduced accordingly."[28] The plain language of my Direct Testimony disproves Mr. Freund's contention that I fail "to recognize start cost payments"

20. Q. Please address Mr. Freund's claim that your analysis is stale and does not reflect then-current avoided costs. (Freund, p. 13)

A. Mr. Freund's argument, echoed by Mr. Snider, is in essence that by 2018, DEC's next deferrable capacity need was to occur at a future date beyond the term of the PPA.[29] For that reason, these witnesses argue DEC was not obligated to offer Cherokee any capacity compensation.[30]

---

[27] Pre-Filed Direct Testimony of Kurt G. Strunk, p. 16.

[28] *Ibid*, footnote 8.

[29] See Mr. Freund's Testimony, p. 14-15.

[30] *Ibid*.

The DEC arguments in this regard are unpersuasive. They are premised on an assumption of zero capacity credit that the NCUC had rejected and that this Commission also implicitly rejected when it allowed the adoption of the North Carolina rates in South Carolina.[31] In this context, it was unreasonable, as of October 2018, to prejudge how such a contentious issue would ultimately be resolved by this Commission in the upcoming avoided cost docket.

It is not uncommon for the host utility's capacity need date, and the relationship to QF capacity pricing, to be subject to debate in adjudicated regulatory proceedings. The topic was hotly debated before this Commission in Docket 2019-186-E.[32] DEC's approach to its Cherokee offer in October 2018 unreasonably ignored the most recent ruling of this Commission in Order 2016-349, while also prejudging the outcome of an upcoming future proceeding.

Although I do not take issue with Mr. Freund's characterization of DEC's 2018 IRP, at the time of the October 2018 Cherokee offer, that 2018 IRP had not yet been approved by the Commission. Furthermore, DEC's stance on which of its over 800 megawatts of new capacity additions in the 2020 to 2026 time frame were and were not avoidable, deferrable or resizable for the purpose of QF avoided capacity compensation was poised to be a contentious subject in the upcoming avoided cost proceeding. It was also possible that the South Carolina Commission would reject Mr. Snider's approach in the same way the NCUC had. It was not appropriate for DEC to prejudge the outcomes of future adjudicated proceedings and offer zero capacity compensation to DEC while

[31] Although prior Commission orders had permitted regulated utilities in South Carolina to apply zero capacity compensation to QFs in periods when the host utility had excess supply, the Commission's decision in Order 2016-349 adopting the NCUC result implicitly went against that principle.

[32] See Order No. 2019-881(A), Public Service Commission of South Carolina, Docket No. 2019-185-E, January 2, 2020, p. 82-89.

offering full capacity compensation to QFs initiating standard offer contracts in late 2018.

21. Q. Mr. Freund makes a reference to a 10-year tolling PPA priced at the time of Cherokee's September 2018 commitment letter to DEC.[33] Do you agree with his analysis of an appropriate 10-year tolling PPA structure, consistent with Cherokee's September 2018 capacity commitment to DEC?

No. Mr. Freund's pricing for the 10-year tolling agreement is not reasonable. His capacity cost compensation is less than a third of what DEC was offering to other QFs at that time under the Commission-approved standard offer. While my $110/kW-year PPA rate is based on DEC's 5-year avoided energy cost forecast, it provides a reasonable floor for a 10-year PPA term, given that Commission-approved QF energy rates for 10-year terms tend to be above those approved for 5-year terms.

22. Q. Is the 10-year tolling PPA pricing as of September 2018 important to Cherokee?

A. Yes. As Mr. Hanson explains in his Rebuttal Testimony, Cherokee is seeking a 10-year tolling PPA priced at the time of its September 2018 capacity commitment to DEC. As such, the appropriate rate for the 10-year term and PPA structure is very relevant.

IV. RESPONSE TO MR. SNIDER ON ALIGNMENT OF THE LEO DATE AND INITIAL CONTRACT DELIVERIES

23. Q. Please identify those elements of DEC's testimony that you address in this section of your rebuttal.

A. In this section, I address Mr. Snider's claim that the LEO date should align with the first date of delivery from the QF to the offtaking utility.[34]

---

[33] See Mr. Freund's Testimony, p. 14.

[34] See Mr. Snider's Testimony, p. 13.

24. Q. If the Commission were to agree with Mr. Snider on this point, what would be the practical implications for QFs?

A. In practice, Mr. Snider's recommendation would mean no advance contracting for QFs, which would be discriminatory against QFs and in violation of FERC's PURPA policies.[35] Mr. Snider is arguing that all QFs should have a LEO that is contemporaneous with the initial delivery of energy or capacity under the QF contract. Such a policy is discriminatory against QFs because it removes opportunities for the QFs to displace utility investment. It undermines the implementing regulations and the PURPA statute itself. QFs are supposed to have an option, which only they can choose to exercise, to sell at a forecast avoided cost rate calculated at the date of the LEO. Mr. Snider's proposal modifies the value of that option by putting QF capacity at a disadvantage relative to utility capacity. For Mr. Snider, QFs should not have a right to contract in advance of delivery, but utility new capacity additions can be developed well in advance of delivery.

V. RESPONSE TO MR. KEEN ON THE CLAIM THAT CHEROKEE DEMANDED A HIGHER RATE THAN AVOIDED COST

25. Q. Please identify those elements of DEC's testimony that you address in this section of your rebuttal.

A. In this section, I address Mr. Keen's mischaracterization of my testimony. Mr. Keen claims that I testify Cherokee needs higher rates (*i.e.*, rates above DEC's avoided cost).[36]

---

[35] See *Final Rule Regarding the Implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978,* Order No. 69 §292.304, FERC Stats. & Regs.

[36] See Mr. Keen's Testimony, p. 9.

26. Q. Does your Direct Testimony include the claim that Cherokee sought a rate above DEC's avoided cost?

A. No. My Direct Testimony includes no such claim. Mr. Keen is wrong to characterize my testimony in that fashion. I understand, and I believe Cherokee understands, that the only entitlement Cherokee has is to a rate at a forecast avoided cost, with the projections of avoided cost being made based on prevailing conditions as of September 2018, when Cherokee communicated its commitment of the Cherokee capacity to DEC for a forward period beginning January 1, 2021.

VI. RESPONSE TO MS. BOWMAN ON QF FINANCEABILITY

27. Q. Please identify those elements of DEC's testimony that you address in this section of your rebuttal.

A. In this section, I respond to Ms. Bowman's interpretation of my testimony to mean that *all* potential QFs should be financeable.[37]

28. Q. Do you believe there is a fundamental divide as between your opinions and those of Ms. Bowman when it comes to QF financeability?

A. No. It is not my testimony that *all* potential QFs should be financeable. I agree with Ms. Bowman that if QFs are uneconomic relative to the offtaking utility's avoided costs, they will not be financeable. My testimony is simply that the legal and regulatory framework for QFs under PURPA assures financeability for QFs that are economically viable at avoided-cost rates.

29. Q. Does this conclude your pre-filed rebuttal testimony?

A. Yes.

[37] See Ms. Bowman's Testimony, p. 25.

June 2021

Kurt G. Strunk